



Arizona Department of Agriculture

Office of Pest Management

1688 W. Adams Street, Phoenix, Arizona 85007
(602) 255-3664 FAX (602) 542-0466

June 11, 2015

Burns Pest Elimination (Business Licensee)
David Gene Burns (Qualifying Party)
Gerald Richard Belec (Certified Applicator)

CONSENT
AGREEMENT/ORDER
Case #100477

This Consent Agreement/Order resolves allegations that Burns Pest Elimination (Burns) Qualifying Party David Burns allowed two applicators to perform pest management services without being certified within 90 days as required, and for failing to record the uncertified applicators' supervisor's name and certification number on the treatment records created by those applicators. Furthermore, Gerald Belec for performing pest management services without being certified.

General Nature of Complaint

On 3-24-14, OPM Inspector Norman Maeser performed an inspection with Burns registered employee, Rayaz Ditano. During the course of the inspection, Mr. Ditano disclosed that he was not certified, yet had been working for the company for approximately one year. Inspector Maeser contacted Mr. Ditano's supervisor, Mr. Vincent Mada, and he confirmed that Mr. Ditano had been performing pest management services for "7 or 8 months." Inspector Maeser noted that OPM's Licensing Database indicated that Mr. Ditano began working for Burns on 2-7-13.

On 4-22-14, OPM Inspector Brian Kennedy received 566 records from Burns, via the company's Attorney Scott Richardson, that represented treatments performed by Mr. Ditano from June 2013 thru March 2014, a period of 9 months. Inspector Kennedy noted that the records all contained Mr. Ditano's name, but were void of the name and certification number of the supervisor.

Inspector Kennedy also sent a list to Mr. Richardson that contained the names of Burns employees appearing in the OPM's Licensing Database who had been registered as employees for more than 90 days without becoming certified. He requested the company provide information on the employees' respective statuses.

On 5-15-14, Inspector Kennedy interviewed Mr. Burns. During the interview Mr. Burns stated that he accepted responsibility for the fact that he was not certified, as the company's supervisors do not have access to the company's personnel management system, and all personnel matters are handled by the human resources department, which is located in his office. However, no explanation as to why the supervisor name and certification information was absent from the treatment records.

On 5-30-14, Inspector Kennedy received information from Mr. Burns that identified a second employee, Gerald Belec, who was not certified within 90 days. Mr. Belec performed pest management services without certification from August 2013 to March 2014 without being certified. Inspector Kennedy noted that the records all contained Mr. Belec's name, but were absent the name and certification information of his supervisor.

On 8-28-14, Inspector Kennedy interviewed Mr. Belec. During the interview, Mr. Belec stated that he knew his licenses had expired and was aware that he needed to be certified within 90 days of beginning his employment with Burns, but he was busy learning a new statewide route and didn't think about it. He stated that he expected Burns to let him know what he needed to do, as he was uncertain if he had to retest, or if he could just pay a fee.

The OPM has determined the above actions of Burns Pest Eliminations and David Burns and Gerald Belec violated the following: performing the business of pest management at a school, without holding a business license and Qualifying Party License.

Business Licensee Holder and Qualifying Party allowed applicator to work for more than 90 days without applicator license.

¹A.R.S. § 32-2312 (E) ("Except as provided in subsection F of this section, each employee of a business licensee applying pesticides shall be licensed in all applicable categories within ninety calendar days after employment.")

¹A.R.S. § 32-2321 (B, 1) ("The following acts are grounds for disciplinary action: Violating this chapter, rules adopted pursuant to this chapter or a written order of the acting director.")

¹A.A.C. R4-29-202 (E) ("Under A.R.S. § 32-2312, an unlicensed person employed by a business licensee may apply pesticides for a maximum of 90 days from the date of employment if the unlicensed person is supervised by a licensed applicator or qualifying party and the applicator or qualifying party providing supervision.")

¹A.A.C. R4-29-504 (C) ("A qualifying party shall not allow an unlicensed applicator to apply a pesticide for more than 90 days of employment ...")

¹A.A.C. R4-29-605 (D) ("A business licensee shall not allow an unlicensed applicator to apply a pesticide for more than 90 days of employment ...")

2. Belec and another applicator applied pesticides without certification. Business Licensee and Qualifying Party jointly responsible.

¹, ²A.R.S. § 32-2325 (A, 4) ("A person shall not: Apply pesticides in any category other than wood-destroying organism management or fumigation unless the person is an applicator certified in that category or applies the pesticides under the direct supervision of an applicator certified in that category.")

¹A.A.C. R4-29-106 (B) ("Under A.R.S. § 32-2308, an applicator, qualifying party, or business licensee who supervises another person, whether the supervised person is licensed or unlicensed, may be held jointly responsible for the acts or omissions of the supervised person.") *See also A.R.S. § 32-2308 (A)*

²A.A.C. R4-29-407 (B) ("An applicator, qualifying party, branch supervisor, or business licensee who supervises another person may be held jointly responsible for the acts or omissions of the supervised person.") *See also § A.R.S. 32-2323 (A)*

3. Belec and another applicator failed to make complete records. Business Licensee and Qualifying Party jointly responsible.

¹A.R.S. § 32-2321 & ²A.R.S. § 32-2325 (B, 1) ("The following acts are grounds for disciplinary action: Violating this chapter, rules adopted pursuant to this chapter or a written order of the acting director.

¹A.A.C. R4-29-307 (B, 9) (" ... The applicator shall include the following information in the service record: Name and license number of the applicator or if the applicator is unlicensed, name of the unlicensed applicator and the name and license number of the applicator providing supervision.")

²A.A.C. R4-29-501 (B, 8) (" ... The applicator shall include the following information in the service record: Name and certification number of the applicator or if the applicator is uncertified, name of the uncertified applicator and the name and certification number of the applicator providing supervision.")

¹A.A.C. R4-29-501 ("A qualifying party shall comply with every provision in Article 3 regarding applicator duties and responsibilities.")

¹A.A.C. R4-29-601 ("A business licensee shall comply with every provision in Article 3 regarding applicator duties and responsibilities ...")

²A.A.C. R4-29-407 (D) ("A QP and business licensee shall comply with every provision in this Chapter regarding applicator duties and responsibilities.")

JUN 23 2015

Disciplinary & Corrective Action

The OPM and the respondents have agreed to resolve the above violations upon the respondents accepting the following terms and taking the following actions:

- a. It is **ORDERED** that **Burns Pest Elimination, Inc.**, holder of Business License **4181** be issued a **Warning**.
- b. It is **ORDERED** that **David Gene Burns**, Certified Qualified Applicator 1059, pay a **\$500.00 Civil Penalty (due within 30 days of the date of this Agreement)**.
- c. It is **ORDERED** that **Gerald Richard Belec**, pay a **\$100.00 Civil Penalty and obtain 2 hours of Continuing Education in the topic of Laws**. The CE shall be separate from that required for license renewal purposes **(due within 30 days of the date of this Agreement)**.

¹ All statutes and rules referenced in this document were the ones in effect until September 13, 2013, unless otherwise indicated. OPM's statutes and rules underwent significant revisions effective September 13, 2013.

² Indicates statutes and rules that became effective on September 13, 2013.

JUN 23 2015


Agreement and Waiver

Each licensee (Respondent) acknowledges that he has read and understands this Consent Agreement/Order, he has had the opportunity to discuss this Consent Agreement/Order with an attorney if desired, and he is entering into this Consent Agreement/Order voluntarily for the purpose of avoiding the expense and uncertainty of an administrative hearing. Each Respondent understands that he has the right to request an administrative hearing concerning this matter, at which administrative hearing he could present evidence and cross-examine witnesses, but that by entering into this Consent Agreement/Order, the Respondent knowingly and voluntarily relinquishes all rights to an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative or judicial action, concerning the matters set forth herein.

The Respondent further understands that this Consent Agreement/Order is a public record that may be publicly disseminated as a formal action of OPM.

By signing below, each party agrees to be bound by this Consent Agreement/Order. If agreeing to this Consent Agreement/Order on behalf of a company or entity, the person signing affirms that he or she has the authority to enter into and bind the company or entity to the terms and conditions of this Consent Agreement/Order. This Consent Agreement/Order may be executed in counterparts and is effective with respect to a Respondent upon the execution of this Consent Agreement/Order by that Respondent and OPM.

RESPONDENTS



Burns Pest Elimination, Business Licensee

6/18/15
Date



David Burns, Qualifying Party Licensee

6/18/15
Date



Gerald Belec, Applicator Licensee

6/18/15
Date

OFFICE OF PEST MANAGEMENT



Mark W. Killian, OPM Acting Director

6/24/15
Date